Supreme Court, U.S.
FILED

01 912 OCT 16 2001

OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

◆

Vishnue I. Jennings
Petitioner

vs.

KELLOGG COMPANY, LOCAL 50
AMERICAN FEDERATION OF GRAIN
MILLERS
Respondents

◆

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
Eighth Circuit

◆

PETITION FOR WRIT OF CERTIORARI

◆

Vishnue I. Jennings
6061 #1 Ridgewyck
Memphis, TN 38115
(901) 566-1037

13pp

QUESTIONS PRESENTED

I. Whether summary judgment can be granted when discovery is not completed and there are genuine issues as to disputed material facts.

II. Whether the court in denying petitioner an appointed attorney when qualifying as a pauper under 28 U.S.C. 1915(d) violates Petitioner's due process of law and equal protection of the law under The Constitution of The United States of America, Bill of Rights XIV Amendment.

III. Whether the court erred in denying a demanded jury trial under The Constitution of The United States of America, Bill of Rights, VII Amendment and Fed.R.Civ.P. Rule 38(a), where there are disputed facts that violate Petitioner's due process of law and equal protection of the law.

PETITION FOR WRIT OF CERTIORARI

Petitioner Vishnue I. Jennings prays that a writ of certiorari issue to review the decision of The United States Court of Appeals For The Eighth Circuit entered 18 July 2001, wherein the court decided an important federal question of due process of law and equal protection of the law in conflict with The Constitution of The United States of America, the Federal Rules of Civil Procedure and Acts of Congress.

OPINIONS BELOW

Vishnue L. Jennings vs. KELLOGG USA, INC., et al, No. 00-2779 order denying petition for rehearing and for rehearing En Banc, 18 July 2001. [Appendix 1].

Vishnue L. Jennings vs. KELLOGG USA, Inc.; American Federation of Grain Millers, Local #50, No. 00-2779 order affirming the decision of the trail court and granting Respondent's summary judgment, 12 June 2001. [Appendix 2].

JURISDICTION

The court of last resort, The United States Court of Appeals For The Eighth Circuit entered an order 18 July 2001 denying Petitioner a rehear of the order of 12 June 2001, therefore the jurisdiction of this court is invoked under U.S.C.

§1251(b)(2); The Constitution of The United States of America Article III Section 2 and Article VI cl 3.

CONSTITUTIONAL PROVISIONS

The Constitution of The United States of America, Bill of Rights, Amendment VII;

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trail by jury shall be preserved . . ."

The Constitution of The United States of America Bill of Rights, Amendment XIV;

". . .nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner, Vishnue I. Jennings, filed a Title VII discrimination lawsuit against KELLOGG USA and AMERICAN FEDERATION OF GRAIN MILLERS LOCAL 50 and filed a motion to proceed in forma pauper, which was granted by the trial court. Petitioner was denied the appointment of an attorney.

Petitioner's complaint was filed in the United States Federal District Court of Memphis, Tennessee, the summons and complaint was served and returned into the court. Respondent's response was filed after the case was transferred to the United States Federal District Court for the District of Nebraska.

Petitioner is an African-American female, who was employed twenty years by Kellogg USA at Memphis, Tennessee and was a member of the A.F.G.M. Local 252. Petitioner had transferred to Kellogg USA Omaha, Nebraska due to down sizing at the Memphis, Tennessee facility and was member of A.F.G.M. Local 50.

Petitioner was discriminated against at the Omaha, Nebraska facility under Title VII and discharged for fourteen [14] months with loss of pay and benefits. Petitioner was singled out as an African-American female and discharged while similarly situated white males and females were treated more favorably.

Petitioner is a member of a protected class, and was qualified for the position she held with Kelloggs, and was subjected to an adverse action and discharge.

Discrimination at Kellogg USA, Omaha, Nebraska facility against African-Americans was so prevalent that a diversity film was shown by the company and approved by the local union, A.F.G.M. that depicted blacks and whites as X's and O's and at the end of the film the blacks, represented by an X was hung by the O's. Kellogg company along with the union made it mandatory to watch this appalling film. Kellogg Company along with the union incited the discrimination of African-Americans with this film, and depicted the daily atmosphere of the facility and the factual unrest portrayed on a daily basis. Because of this atmosphere and the acts of the Kellogg company managers, Petitioner was discriminated against.

At the trial court level Petitioner demanded a jury trial and requested an attorney under 28 U.S.C. 1915(d) neither was granted. There were

numerous disputed material facts for a jury to determine.

This case was in the trial court for over two years, there were requests for discovery, interrogatories, and admissions, some was completed but most was still pending when Respondent's summary judgment was granted. Respondent even requested depositions be taken after the filing of their Motion for Summary Judgment, there remained numerous genuine issues of material disputed facts. Kellogg USA and the A.F.G.M. both filed separate motions for summary judgment and Petitioner responded timely to both and showed that there were genuine issues of material disputed facts and pending discovery. Petitioner supported her response with the Federal Rules of Civil Procedure and case law, that a summary judgment was not appropriate at this time. The case was not ripe.

Petitioner, also filed for summary judgment and the trial court denied her petition. There was no judicial hearing on Respondent's Motion For Summary Judgment, none was ever scheduled. Months after the filing of Respondent's motion for summary judgment with discovery still pending, they requested a deposition of Petitioner.

The film on discrimination stated herein showed there were genuine issues of material disputed facts as well as the actions of the Kellogg Company and A.F.G.M. Local 50, and all were for a jury to determine under the supreme law of the land, The Constitution of The United States of America, Bill of Rights Amendment VII and prevailing case law.

In order to prevail on a summary judgment under Title VII, the defendants had to overcome

four criteria;

1.) She is a member of a protected class;

2). She conducted herself in a manner consistent with employees legitimate business expectations; and was qualified for her position.

3). She suffered from an adverse employment action;

4). Similar situated employees who were not members of the protected class were treated more favorably. Atkins v School Com'rs of City of Indianapolis, 830 F.Supp. 1169 (S.D. Ind 1993), McDonald Douglas Corp. v Green, 411 U.S. 792 (1973).

In the record, in the trial court, the Respondents stipulate that under Title VII, the first three apply to Petitioner Jennings, all Petitioner had to prove was number 4 of Title VII. Petitioner's firing was a pretext under the theory of sabotage to a production line and equipment. Through discovery, Respondents admitted there was no sabotage. A white male in a similar situation and not a member of the protected class, was also fired, but he was reinstated with back pay, benefits and seniority restored. Petitioner was not reinstated until some 14 months later, no back pay, was restored to her. Her seniority was soon thereafter purged in retaliation against her. A similar situated white female was never discharged, nor even reprimanded, for allegedly lying to company managers who stated that Petitioner was discharged because the white female had told them she saw Petitioner commit sabotage. Under oath, the white female testified that she saw Petitioner do nothing.

It is undisputed that this African-American Female was discriminated against and treated

differently than her counter part in a similar situation, on a pretext of sabotage.

Thus Petitioner Jennings was discriminated against under the four categories under Title 7.

A trial by jury of the genuine issues of material disputed facts, is secured to Petitioner under The Constitution of The United States of America, Bill of Rights, Amendment XIV, due process of law and the equal protection of the law.

The trial court erred in granting Respondent's motion for summary judgment, without a hearing, and numerous genuine issues of material disputed facts and the denial of Petitioner's rights, the appellate court erred in upholding the decision of the trial court.

REASON FOR GRANTING PETITION FOR WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT

Petitioner Jennings enjoys rights under The Constitution of The United States of America, Bill of Rights, Amendment VII and XIV, The Federal Rules of Civil Procedure, acts of congress and the expectation that the courts will always be open to her and that the courts will adjudicate fairly and impartially the merits of her grievances and she is entitled to be heard.

B. ARGUMENT

Petitioner Jennings was a member of a protected class under an act of congress Title VII, she was discriminated against and fired for 14 months reinstated without back pay, while her counterpart in the similar situation, a white male,

was fired, rehired and all back pay, benefits and seniority reinstated. The white female was not fired at all.

Petitioner sued for discrimination on a pretext, as a member of the protected class under Title VII against Kellogg USA and A.F.G.M. The trial court, with much of discovery still pending, and genuine issues of material disputed facts before the court dismissed the case on a motion for summary judgment. Plaintiff showed to the court that a summary judgment could not be granted at this point, Fed.R.Civ.P. Rule 56, Anderson v Liberty Lobby, Inc. 477 U.S. 242 (1986), Celotex v Catrett, 477 U.S. 317 (1986)

Petitioner was granted forma paupers status, but the court denied her counsel, 28 U.S.C. 1915(d), she demanded a jury trial that was denied in violation of the Bill of Rights Amendment VII, Fed.R.Civ.P. Rule 38(a) and Reeves v Sanderson Plumbing Prod., Inc., No. 99 536. Petitioner is entitled to due process of law and the equal protection of the laws, Bill of Rights Amendment XIV.

Under Title VII there are 4 criteria that must be met and Respondents stipulated to the first three, all Petitioner had to prove was number 4, persons similarly situated and not a member of the protected class were treated more favorably, Petitioner pleaded this fact with particularity and supported her claim with facts and case law, Atkins v School Com'rs of City of Indianapolis, 830 F.Supp. 1169 (S.D. Ind 1993), McDonald Douglas Corp. v Green, 411 U.S. 792 (1973).

Petitioner qualified under Title VII in all 4 categories and had been fired under a pretext.

This honorable court is duty bound in

accordance with The Constitution of The United States of America Article VI cl 3 Oath of Affirmation, to uphold the Constitution, laws and treaties of The United States which includes Title VII, Amendment VII and XIV.

CONCLUSION

For all the foregoing reasons herein, Petitioner prays this honorable court will grant the writ of certiorari and secure to Petitioner her due process of law and equal protection of the laws.

Respectfully submitted,

Vishnue I. Jennings, *sui juris*
6061 #1 Ridgewick
Memphis, TN. 38115
(901) 566-1037

October 2001

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 00-2779

Vishnue L. Jennings, Appellant,	*	
	*	order denying
	*	Petition for
v.	*	Rehearing and for
	*	Rehearing En Banc
Kellogg USA, Inc., et al Appellees.	*	
	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 18, 2001

Order Entered at the Direction of the Court

/s/

Clerk, U.S. Court of Appeals, Eighth Circuit

(no file date stamped on document)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 00-2779

Vishnue L. Jennings, Appellant,	*	
	*	Appeal from the
	*	United States
v.	*	District Court
	*	for the District
Kellogg USA, Inc.; American Federation of Grain Millers, Local #50, Appellees.	*	of Nebraska.
	*	
	*	(Unpublished)
	*	

Submitted: June 7, 2001

Filed: June 12, 2001

Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and FAGG, Circuit Judges.

PER CURIAM.

Vishnue L. Jennings appeals the district court's adverse grant of summary judgment in Jenning's employment discrimination action. After de novo review of the record and a thorough review of the parties' submissions, see LaCroix v. Sears, Roebuck, & Co. 240 F.3d 688, 690 (8th Cir.

2001) (standard of review), we conclude summary judgment for defendants was appropriate. Accordingly we affirm for the reasons stated in the district court's opinion. See 8th Cir. R. 47B.

A true copy

Attest: (no signature)

Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX 2